

FLOWCHART OF CHILD PROTECTIVE PROCEEDINGS TIME FRAMES & INFORMATION

Child Protective Services Investigation: Mandated and voluntary reporters contact CPS to make a referral of child abuse or neglect. After investigation of the allegation, this action may involve either offering services and counseling to the family or filing a petition requesting formal court action. A child may be taken into temporary protective custody following an investigation, but prior to the filing of a petition in court by voluntary placement or by obtaining an apprehension order.

Preliminary Hearing: The hearing must be brought before the court with a petition within 24 hours if the child is out of home custody, excluding Sundays and holidays unless adjourned for good cause. See MCR 3.965 (A)(1). At this hearing, the Court must determine if there is probable cause to authorize the petition and whether it is contrary to the welfare of the child to place the child in the parents' care and if it is, in the best interests of the child to allow supervised and/or unsupervised parenting time.

Pretrial/Pleas Proceeding: Timing is at the discretion of the court. Once a plea is accepted by the court by one or both parents, the court will have jurisdiction over the minor child.

Trial: If a child is in placement, the trial must commence as soon as possible, but no later than 63 days after the child is placed by the court unless the trial is postponed. See MCR 3.972(A). If a child is NOT in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause. See MCR 3.972(A). At this phase, after hearing all testimony and reviewing all evidence, the court will determine if there is enough evidence to place the child under the jurisdiction of the court or to dismiss the case. The standard of proof is preponderance of the evidence.

Initial Dispositional Hearing: This hearing must be held within 35 days of trial, except for good cause. See MCR 3.973. This hearing is to determine what measures the court will take with respect to a child properly within its jurisdiction and against any adult. At this hearing, the court will review the case service plan created by the case worker and either dismisses the case because no further services are required for the family or the court will enter orders regarding the child's placement and the treatment and conduct of the respondents and other adults.

Dispositional Review Hearing:

Child At Home:

FIRST YEAR: The progress of the child must be reviewed no later than 182 days from the date a petition is filed, and no later than every 91 days after that for the first year that the child is under the jurisdiction of the court. See MCL 712A.19(2).

AFTER FIRST YEAR: The progress of the child must be reviewed no later than 182 days from each preceding review until case is dismissed. See MCL 712A.19(2).

Child Removed From Home:

FIRST YEAR: The progress of the child must be reviewed no later than 182 days after the child removal from his or her home, and no later than every 91 days after that for the first year. See MCL 712A.19(3).

AFTER FIRST YEAR: The progress of the child must be reviewed no later than 182 days from the immediately preceding review hearing before the end of that first year, and no later than every 182 days from each preceding review hearing until the case is dismissed. See MCL 712A.19(3).

Child Is Permanently Placed With a Relative or Child Is In A Permanent Foster Family Agreement: The progress of the child must be reviewed no later than 182 days after the child has been removed from his or her home, and no later than every 182 days after so long as the child is under the court's jurisdiction. See MCL 712A.19(4).

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Permanency Planning Hearing:

FIRST YEAR: Within 12 months from the date that the child was originally removed from the home. See MCL 712A.19a(1).

AFTER FIRST YEAR: Within 12 months of the preceding permanency planning hearing. See MCL 712A.19a(1)

Permanency planning hearings are conducted to review the progress being made toward returning home a child in foster care, or to show why the child should not be made a permanent court ward. MCL 712A.19a(3). The court must obtain the child's views regarding his/her permanency plan in an age appropriate manner. MCL 712A.19a(3). The court must determine the following:

1. whether the child may be returned to the parent, guardian, or legal custodian and the goal remain reunification;
2. whether a petition to terminate parental rights should be filed and the goal be changed to adoption;
 - a. the petition must be filed within 28 days of the judicial determination that reasonable efforts to reunite the family or to prevent removal are not required
3. whether the child may be placed in a legal guardianship and the goal be changed to guardianship;
4. whether the child may be permanently placed with a fit and willing relative and the goal be changed as such; or
5. whether the child may be placed in another planned permanent living arrangement and the goal be changed as such, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four options listed above.

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Termination of Parental Rights : Must commence no later than 42 days of petition; must conclude within 70 days. See MCR 3.977, MCL 712A.19b(1).

Prior to the permanent wardship trial commencing, the parent(s) may voluntarily release their parental rights without the court announcing a statutory basis for termination.

Once a supplemental petition is filed with the court and it requests termination of parental rights and cites termination citations as stated in MCL 712A.19b, the trial court must determine whether the termination citations alleged are actually found and whether termination of parental rights are in the best interests of the child per MCL 712A.19b(5). To determine best interests, some court use MCL 722.23 and the 12 factors listed in that statute and other courts look at the bond between the parent(s) and the child and determine whether it is a healthy bond. The standard of proof in permanent wardship trials are clear and convincing evidence. If permanent wardship is granted, the trial court must immediately advise the respondent parent(s) of their right to appeal and other factors listed in MCR 3.977(J).

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Post Termination Review :

FIRST YEAR: Must be held no later than 91 days after the termination of parental rights, and no later than 91 days after that hearing for the first year following termination of parental rights. See MCL 712A.19c(1).

AFTER FIRST YEAR: Must be held no later than 182 days from the immediately preceding review hearing before the end of the first year, and no later than every 182 days from each preceding review hearing until the case is dismissed. See MCL 712A.19c(1).

These hearings review the progress of the child and the progress the agency is making on achieving the child's goal of adoption, placement with a fit and willing relative, guardianship, or placement in another planned permanent living arrangement. The court must determine if the placement is still in the child's best interests, whether the agency is making reasonable efforts to achieve the goal, and whether progress is being made to achieve that goal.

Table Summarizing Michigan Statutes and Court Rules Related to Child Protective Proceedings

The following table provides general guidance in locating statutes and court rules related to child protective proceedings.

Type of Proceeding	Statutes and Court Rules
Reporting and Investigation of Suspected Child Abuse or Neglect	<p>Statutes:</p> <ul style="list-style-type: none"> -MCL 722.621 et seq. (Child Protection Law) MCL 722.904 of the Parental Rights Restoration Act (judicial reporting of suspected abuse following hearing on waiver of parental consent for abortion) -MCL 333.2640, MCL 333.16281, MCL 333.16648, MCL 333.18117, MCL 333.18237, MCL 330.1748a, MCL 333.6112, MCL 333.6113, and MCL 600.2165 (release of medical, dental, counseling, psychological, mental health, substance abuse, and school records) <p>Court Rule: MCR 3.218(D) (DHS CPS access to Friend of the Court record(s))</p>
Child Protective Proceedings in Family Division	<p>Statutes:</p> <ul style="list-style-type: none"> -MCL 712A.1 et seq (Juvenile Code) -MCL 722.1101 et seq. (Uniform Child Custody Jurisdiction & Enforcement Act) <p>Court Rules:</p> <ul style="list-style-type: none"> -MCR 3.901-3.928 (general rules for child protective cases) -MCR 3.961-3.979 (rules for child protective cases) -MCR 3.991-3.993 (reviews, rehearings, and appeals)
Safe Delivery of Newborns	<p>Statute:</p> <ul style="list-style-type: none"> MCL 712.1 et seq. (Safe Delivery of Newborns Law)
Establishing Parentage	<p>Statutes</p> <ul style="list-style-type: none"> -MCL 722.711 et seq. (Paternity Act) -MCL 722.100 et seq. (Acknowledgment of Parentage Act)
Care and Custody of a Child Subject to Child Protective Proceedings	<p>Statutes:</p> <ul style="list-style-type: none"> -Social Welfare Act, MCL 400.1 et seq. (contains provisions regarding placement and funding of placements) -Michigan Children's Institute, MCL 400.201 et seq. -MCL 700.5201 et seq. (appointment of guardians) -Foster Care Review Boards, MCL 722.131 et seq. -Foster Care and Adoption Services Act, MCL 722.951 et seq. (rules governing supervising agencies) -Child Care Organizations, MCL 722.111 et seq. (rules governing foster care and other placement(s)) -MCL 722.124a(1) (consent for medical treatment of court ward)

Indian Child Welfare Act

The Indian Child Welfare Act is a federal law passed by Congress in 1978 to protect Indian families and tribes from the removal of their children in state court proceedings. Congress found that state social workers and court systems did not understand or consider the unique culture of Indian families and the importance of tribal relations. The very existence of Indian tribes and culture was threatened by the removal of Indian children from their homes, and placement in non-Indian settings. The Indian Child Welfare Act is designed to preserve Indian tribes and families.

When Does the Indian Child Welfare Act Apply?

The Indian Child Welfare Act applies to cases in state courts where a non-parent seeks to remove an Indian child from the home or control of its parents or Indian custodians.

In Michigan, this typically occurs when Protective Services files a petition in probate court charging the parents with neglecting, abusing or abandoning their children. Foster care or adoptive placement is often sought in these situations. The Act also applies when the child is charged with wrongdoing which would not be considered criminal if done by an adult, such as truancy or runaway.

When Won't the Indian Child Welfare Act Apply?

The Indian Child Welfare Act does not apply to custody disputes between parents so long as child custody is awarded to one of the parents. The Act also does not apply to cases where minors are charged with criminal wrongdoing.

Who Does the Act Apply To?

The Act applies to Indians, Indian children, Indian custodians and Indian tribes. An Indian is defined as a person who is a member of an Indian tribe. An Indian child is defined as an unmarried person under eighteen who is a member or eligible for membership in an Indian tribe. An Indian custodian means an Indian person who is caring for an Indian child with the parents' consent or by tribal law or custom, or under state law.

What Rights Do The Parents Have Under the ICWA?

The Act requires that before separating an Indian child from its parents, all other methods of solving the family's problems must have been tried without success. The state must make active efforts to provide the services necessary to prevent the family's break-up before any court action is taken. The court cannot order removal unless these services have been provided and have proven unsuccessful.

Except for emergencies, a child may not be taken from its Indian parents unless the child will suffer emotional or physical harm if left with its parents. This must be shown by clear and convincing evidence including testimony of expert witnesses who are knowledgeable in Indian customs, social relations and child rearing.

Parental rights cannot be terminated (the rights to the child permanently lost) unless the court finds beyond a reasonable doubt that the child will be physically or emotionally harmed by staying with its parents. This must be shown by testimony of expert witnesses knowledgeable in Indian customs, social relations and child rearing.

The state court must tell Indian parents or custodians that they have a right to an attorney, and that the court will appoint an attorney for them if they cannot afford one.

What Rights Does the Child's Tribe Have Under the ICWA?

If a state court is asked to remove a child from the care of an Indian parent and it has reason to believe that the child is Indian, it must notify the child's tribe of the proceedings. If the tribe is not known, the court must notify the regional office of the Bureau of Indian Affairs to find out the child's tribal membership. The notice must be in

writing, indicating the tribe's right to become a party to the case and allowing ten days after delivery for the tribe to respond. The tribe may have an additional twenty days if it so requests.

The child's tribe may either take control of the case itself, or continue as a party in the state court proceeding. If the tribe stays in state court the tribe's arguments and desires must be considered by the state court, and the state court must follow strict guidelines to maintain the child's cultural environment.

Where is an Indian Child to be Placed When Placement is Necessary?

The Indian Child Welfare Act commands the state court follow certain placement priorities for Indian children. If placement out of the home is necessary, the court must first attempt to place the child with a member of its extended family, such as a grandparent, aunt, uncle or other close relative. The court may consider other alternatives, only if a relative is not available. The court's second choice is to place the child with a member of the child's tribe or in a tribally approved foster home. When a foster home specified by the tribe is not available, the State must place the child in an Indian foster home which is state approved. If none of these placements can be made, placement in an Indian operated institution is permitted. These priorities apply to both foster care and adoptive placement. In making its decision regarding placement, the court must consider only the Indian community standards of a suitable home and not the standards of the non-Indian community.

Does the ICWA Apply When Indian Parents Voluntarily Place Their Children in Foster Care?

Because many Indian parents may not fully understand the effect of placements, the Act provides that consent to a voluntary placement must be explained to the Indian parents in court and the judge must determine that the parents understand the affect of their consent. Indian parents may withdraw their voluntary consent to foster care placement at any time, and their children must be immediately returned.

Currently, the Act does not require the Court to give the child's tribe notice in cases of voluntary placement. Therefore, it is important for the Indian parent to contact its tribe before voluntarily placing the child, so that the cultural heritage of the child can be protected.

Does the Act Apply When Indian Parents Voluntarily Consent to Adoption?

Under the Act, any consent to adoption given before the birth of the child, or ten days after the birth, is not valid. Consent to adoption may be withdrawn at any time prior to the entrance of a final court order of adoption. If the adoption consent was obtained through trick or pressure, the adoption can be set aside if less than two years has passed since the date of the adoption.

Conclusion

The Indian Child Welfare Act is a very important law. It can be of great benefit to Indian tribes and individuals who seek to prevent the breakup of Indian families and the loss of tribal culture. It is critical for Indian parents to tell their lawyers, the judge, and social workers that they are a member of an Indian tribe, and that their child is a member of, or eligible for membership in an Indian tribe.

REPORT OF ACTUAL OR SUSPECTED CHILD ABUSE OR NEGLECT

Michigan Department of Human Services

Was complaint phoned to DHS? <input type="checkbox"/> Yes <input type="checkbox"/> No ▶ If yes, Log # _____ ▶ If no, contact the local DHS Office immediately				
INSTRUCTIONS: REPORTING PERSON: Complete items 1-21 (22-30 should be completed by medical personnel, if applicable). Send PART 1 to local County DHS where the child is found. Retain PART 2 for your records. See additional instructions on back.				1. Date _____
2. List of child(ren) suspected of being abused or neglected (list additional children on back of Part 1)				
NAME	BIRTH DATE	SOCIAL SECURITY #	SEX	RACE
3. Mother's name _____				
4. Father's name _____				
5. Child(ren)'s address (No. & Street)		6. City	7. County	8. Phone No.
9. Name of alleged perpetrator of abuse or neglect		10. Relationship to child(ren)		
11. Person(s) the child(ren) living with when abuse/neglect occurred		12. Address, City & Zip Code where abuse/neglect occurred		
13. Describe injury or conditions and reason for suspicion of abuse or neglect (Attach additional sheets if necessary) _____ _____				
14. Source of Complaint (Check appropriate box)				
<input type="checkbox"/> PHYSICIAN/PHYSICIAN'S ASSISTANT <input type="checkbox"/> AUDIOLOGIST <input type="checkbox"/> MEDICAL EXAMINER (Coroner) <input type="checkbox"/> *SOCIAL WORKER <input type="checkbox"/> DENTIST/DENTAL HYGIENIST <input type="checkbox"/> SCHOOL ADMINISTRATOR <input type="checkbox"/> NURSE <input type="checkbox"/> SCHOOL COUNSELOR <input type="checkbox"/> EMERGENCY MEDICAL SERVICES PERSONNEL <input type="checkbox"/> HOSPITAL <input type="checkbox"/> FAMILY INDEPENDENCE MANAGER <input type="checkbox"/> FAMILY INDEPENDENCE SPECIALIST <input type="checkbox"/> SOCIAL WORK SPECIALIST MANAGER <input type="checkbox"/> WELFARE SERVICES SPECIALIST		<input type="checkbox"/> PSYCHOLOGIST <input type="checkbox"/> CLERGY <input type="checkbox"/> PROFESSIONAL COUNSELOR <input type="checkbox"/> MARRIAGE/FAMILY THERAPIST <input type="checkbox"/> TEACHER <input type="checkbox"/> DHS FACILITY <input type="checkbox"/> LAW ENFORCEMENT OFFICER <input type="checkbox"/> DCH FACILITY <input type="checkbox"/> CHILD CARE PROVIDER <input type="checkbox"/> ELIGIBILITY SPECIALIST <input type="checkbox"/> SOCIAL WORK SPECIALIST <input type="checkbox"/> SOCIAL SERVICES SPECIALIST <input type="checkbox"/> Other (Specify below) _____		
15. Reporting person's name		16. Name of reporting organization (school, hospital, etc.)		
17. Address (No. & Street)		18. City	19. State	20. Zip Code
				21. Phone No.

TO BE COMPLETED BY MEDICAL PERSONNEL WHEN PHYSICAL EXAMINATION HAS BEEN DONE

22. Summary report and conclusions of physical examination (Attach Medical Documentation) _____ _____		
23. Laboratory report		24. X-Ray
25. Other (specify)		26. History or physical signs of previous abuse/neglect <input type="checkbox"/> YES <input type="checkbox"/> NO
27. Prior hospitalization or medical examination for this child		
DATES	PLACES	
28. Physician's Signature	29. Date	30. Hospital (if applicable)
Department of Human Services (DHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, sexual orientation, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to a DHS office in your area.		AUTHORITY: P.A. 238 of 1975. COMPLETION: Mandatory. PENALTY: None.

INSTRUCTIONS

GENERAL INFORMATION:

This form is to be completed as the written follow-up to the oral report (as required in Sec. 3 (1) of 1975 PA 238, as amended) and mailed to the local county Department of Human Services. Indicate if this report was phoned into DHS as a report of suspected CA/N. If so, indicate the Log # (if known). The reporting person is to fill out as completely as possible items 1-21. Only medical personnel should complete items 22-30.

1. Date - Enter the date the form is being completed.
2. List child(ren) suspected of being abused or neglected - Enter available information for the child(ren) believed to be abused or neglected. Indicate if child has a disability that may need accommodation.
3. Mother's name - Enter mother's name (or mother substitute) and other available information. Indicate if mother has a disability that may need accommodation.
4. Father's name - Enter father's name (or father substitute) and other available information. Indicate if father has a disability that may need accommodation.
5. Child(ren)'s address - Enter the address of the child(ren).
6. City
7. County
8. Phone - Enter phone number of the household where child(ren) resides.
9. Name of alleged perpetrator of abuse or neglect - Indicate person(s) suspected or presumed to be responsible for the alleged abuse or neglect.
10. Relationship to child(ren) - Indicate the relationship to the child(ren) of the alleged perpetrator of neglect or abuse, e.g., parent, grandparent, babysitter.
11. Person(s) child(ren) living with when abuse/neglect occurred - Enter name(s). Indicate if individuals have a disability that may need accommodation.
12. Address where abuse / neglect occurred.
13. Describe injury or conditions and reason of suspicion of abuse or neglect - Indicate the basis for making a report and the information available about the abuse or neglect.
14. Source of complaint - Check appropriate box noting professional group or appropriate category.
Note: If abuse or neglect is suspected in a hospital, also check hospital.

DHS Facility - Refers to any group home, shelter home, halfway house or institution operated by the Department of Human Services.

DCH Facility - Refers to any institution or facility operated by the Department of Community Health.

15. Reporting person's name - Enter your name if you are reporting this matter.
16. Name of reporting organization - Enter the name of the agency or organization, if appropriate.
17. Address
18. City
19. State
20. Zip Code
21. Phone Number